

NOV 29 2005

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JOHN F. CORCORAN, CLERK  
BY: *Samuel H. Kelly*  
DEPUTY CLERK

UNITED STATES OF AMERICA,  
Plaintiff,

v.

THOMAS J. BARKER  
Defendant

Criminal Case No. 4:04cr70031

**ORDER**

By: Jackson L. Kiser  
Senior U.S. District Judge

This matter is before the court upon petitioner Thomas J. Barker's motion for reconsideration of his sentence pursuant to Rule 60(a) of the Federal Rules of Civil Procedure. However, as this is a criminal matter, Rule 60(a) of the Federal Rules of Civil Procedure is inapplicable.

Accordingly, to the extent Barker's motion can be construed as a Motion to Set Aside his Sentence, I must deny the motion for lack of jurisdiction. Title 18, § 3582(c) expressly states "[t]he court **may not** modify a term of imprisonment once it has been imposed except" upon a motion by the Bureau of Prisons or the government or other circumstances not present in Mallory's case. See also Fed. R. Crim. Pro. 35 (court can only correct or reduce sentence only within seven days from the entry of the judgment upon motion by the government or upon remand from the court of appeals). As I find no basis upon which I have jurisdiction to reduce defendant's sentence at this time, it is hereby **ORDERED** that his Motion to Set Aside Sentence shall be and hereby is **DENIED**.

The Clerk of the Court is directed to send certified copies of this order to petitioner and counsel of record for the respondent.

ENTER: This 29<sup>th</sup> day of November, 2005.

*Jackson L. Kiser*  
Senior United States District Judge